

AN ACT

ENTITLED, An Act to revise and modify certain provisions relating to the award of child custody and to declare an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That chapter 25-5 be amended by adding thereto a NEW SECTION to read as follows:

Except for proceedings under chapter 26-7A, 26-8A, 26-8B, or 26-8C, the court may allow any person other than the parent of a child to intervene or petition a court of competent jurisdiction for custody or visitation of any child with whom he or she has served as a primary caretaker, has closely bonded as a parental figure, or has otherwise formed a significant and substantial relationship. It is presumed to be in the best interest of a child to be in the care, custody, and control of the child's parent, and the parent shall be afforded the constitutional protections as determined by the United States Supreme Court and the South Dakota Supreme Court. A parent's presumptive right to custody of his or her child may be rebutted by proof:

- (1) That the parent has abandoned or persistently neglected the child;
- (2) That the parent has forfeited or surrendered his or her parental rights over the child to any person other than the parent;
- (3) That the parent has abdicated his or her parental rights and responsibilities; or
- (4) That other extraordinary circumstances exist which, if custody is awarded to the parent, would result in serious detriment to the child.

Section 2. That chapter 25-5 be amended by adding thereto a NEW SECTION to read as follows:

Serious detriment to a child may exist whenever there is proof of one or more of the following extraordinary circumstances:

- (1) The likelihood of serious physical or emotional harm to the child if placed in the parent's custody;

- (2) The extended, unjustifiable absence of parental custody;
- (3) The provision of the child's physical, emotional, and other needs by persons other than the parent over a significant period of time;
- (4) The existence of a bonded relationship between the child and the person other than the parent sufficient to cause significant emotional harm to the child in the event of a change in custody;
- (5) The substantial enhancement of the child's well-being while under the care of a person other than the parent;
- (6) The extent of the parent's delay in seeking to reacquire custody of the child;
- (7) The demonstrated quality of the parent's commitment to raising the child;
- (8) The likely degree of stability and security in the child's future with the parent;
- (9) The extent to which the child's right to an education would be impaired while in the custody of the parent; or
- (10) Any other extraordinary circumstance that would substantially and adversely impact the welfare of the child.

Section 3. That chapter 25-5 be amended by adding thereto a NEW SECTION to read as follows:

Nothing in section 1 of this Act creates any right on behalf of a stepparent to seek custody or visitation with a stepchild who has lived with that stepparent merely because the stepparent was married to or living with the child's parent.

Section 4. That chapter 25-5 be amended by adding thereto a NEW SECTION to read as follows:

If a court determines that a person other than a parent should be awarded custody or visitation, the court need not terminate either parent's parental rights over the child. A judgment awarding to a person other than a parent custodial rights may award the parent visitation rights with the child.

Section 5. That chapter 25-5 be amended by adding thereto a NEW SECTION to read as follows:

If a court awards a person other than a parent custodial rights to a child, the court may set child support in whatever amount it deems appropriate, and notwithstanding the provisions of any other statute to the contrary, may waive the parent's duty to provide monetary or other support for his or her child.

Section 6. That chapter 25-5 be amended by adding thereto a NEW SECTION to read as follows:

It is the express legislative intent that this Act apply to all pending matters involving disputed custody of a child between a parent and a person other than a parent meeting the standing provisions of section 1 of this Act, and all subsequent custody disputes involving a person other than a parent.

Section 7. Whereas, this Act is necessary for the immediate preservation of the public peace, health, or safety, an emergency is hereby declared to exist, and this Act shall be in full force and effect from and after its passage and approval.

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I certify that the attached Act
originated in the

SENATE as Bill No. 177

Secretary of the Senate
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President of the Senate

Attest:

Secretary of the Senate

Speaker of the House

Attest:

Chief Clerk

Senate Bill No. 177
File No. _____
Chapter No. _____

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Received at this Executive Office
this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor
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The attached Act is hereby
approved this _____ day of
_____, A.D., 20____

Governor
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STATE OF SOUTH DAKOTA,
ss.
Office of the Secretary of State

Filed _____ , 20____
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State